

## **Qualifying Exigency / Call to Active Duty Leave**

***Q. What is “qualifying exigency leave”?*** A. “Qualifying exigency leave” is one of the two new military family leave provisions. It may be taken for any qualifying exigency arising out of the fact that a covered military member is on active duty or call to active duty status. The Department’s new regulations include a broad list of activities that are considered qualifying exigencies and will permit eligible employees who are family members of a covered military member to take FMLA leave to address the most common issues that arise when a covered military member is deployed, such as attending military-sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare. For a complete list of qualifying exigencies, see the questions below.

***Q. Who is a “covered military member”?***

A. A covered military member is the employee’s spouse, son, daughter, or parent who is on active duty or call to active duty status.

***Q. What is “active duty or call to active duty status”?***

A. Active duty or call to active duty status refers to a member of the National Guard or Reserves who is under a call or order to active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

***Q. Are families of servicemembers in the Regular Armed Forces eligible for qualifying exigency leave?***

A. No. The statute passed by Congress providing these new military family leave entitlements only extended the right to take FMLA leave because of a qualifying exigency to family members of National Guard and Reserves, and certain retired military. By law, the Department does not have the authority to extend the entitlement to take FMLA leave because of a qualifying exigency to family members of servicemembers in the Regular Armed Forces.

***Q. Can I take qualifying exigency leave if my son or daughter is 18 years old or older?***

A. Yes. The new FMLA regulations contain special definitions for son and daughter for both of the military family leave provisions. For qualifying exigency leave, an eligible employee may take leave for his or her “son or daughter on active duty or call to active duty status,” which is defined as the employee’s biological, adopted, or foster child, stepchild, legal ward, or child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

***Q. Can I take qualifying exigency leave if the covered military member is my stepson or stepdaughter? Alternatively, can I take qualifying exigency leave if the covered military member is my stepparent?***

A. Yes. Under the FMLA for qualifying exigency leave, a “son or daughter on active duty or call to active duty status” means the employee’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age. Additionally, under the FMLA for qualifying

exigency leave, a “parent” means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents “in law.”

***Q. How will I know whether a covered military member has been called to or is on active duty in support of a “contingency operation?”***

A. A covered military member’s active duty orders will generally specify whether he or she is serving in support of a contingency operation. You also may confirm whether a particular servicemember is serving in support of a contingency operation by contacting the appropriate military branch.

***Q. What is a “qualifying exigency”?***

A. The Department has developed a list of qualifying exigencies that encompass a wide range of specific activities in the following broad categories. Qualifying exigencies include:

- Issues arising from a covered military member’s short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification;
- Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs, and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- Making or updating financial and legal arrangements to address a covered military member’s absence;
- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- Taking up to five days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member’s active duty status, and addressing issues arising from the death of a covered military member; and
- Any other event that the employee and employer agree is a qualifying exigency.

***Q. Can I take qualifying exigency leave to pick up a child from school or attend a school event?***

A. Yes, in certain limited circumstances. An eligible employee caring for a covered military member's child may use qualifying exigency leave to provide childcare on an urgent, immediate need basis, but not on a routine, everyday basis, where the need to provide the care arises from the active duty or call to active duty status of the covered military member. Accordingly, an employee could use qualifying exigency leave to provide childcare in an emergency, such as a school closure due to inclement weather, if the employee's need to provide the care arises from the active duty status of a covered military member. Qualifying exigency leave could not be used, however, on a routine basis to provide daily childcare after school hours (although it could be used temporarily while making arrangements for such care). Qualifying exigency leave may also be used to attend certain meetings with school staff, if those meetings are necessary due to the active duty or call to active duty status of the covered military member. For example, qualifying exigency leave could be used to attend a meeting with a teacher to discuss behavioral problems related to the child's parent being deployed. Qualifying exigency leave may not be used, however, for attending routine school events, such as birthday parties or plays.

***Q. For what additional events may employers and employees agree to use qualifying exigency leave?***

A. Employers and employees may agree to cover any additional events arising from the covered military member's active duty or call to active duty status as qualifying exigency leave. Such events may include leave to spend time with a covered military member either prior to or post deployment, or to attend to household emergencies that would normally have been handled by the covered military member. Employers and employees must agree to both the timing and duration of any such qualifying exigency leave and the leave may be counted against the employee's 12 week FMLA leave entitlement.

***Q. What type of notice must I provide to my employer when taking FMLA leave because of a qualifying exigency?***

A. An employee must provide notice of the need for qualifying exigency leave as soon as practicable. For example, if an employee receives notice of a family support program a week in advance of the event, it should be practicable for the employee to provide notice to his or her employer of the need for qualifying exigency leave the same day or the next business day. When the need for leave is unforeseeable, an employee must comply with an employer's normal call-in procedures absent unusual circumstances.

An employee does not need to specifically assert his or her rights under FMLA, or even mention FMLA, when providing notice. The employee must provide "sufficient information" to make the employer aware of the need for FMLA leave and the anticipated timing and duration of the leave.

***Q. What are the certification requirements for taking qualifying exigency leave?*** The first time that an employee requests qualifying exigency leave, an employer may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military that indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service.

In addition, each time that an employee first requests leave for one of the qualifying exigencies, an employer may require certification of the exigency necessitating leave. Certification supporting leave for a qualifying exigency includes: appropriate facts supporting the need for leave, including any available written documentation supporting the request; the date on which the qualifying exigency commenced or will commence and the end date; where leave will be needed on an intermittent basis,

the frequency and duration of the qualifying exigency; and appropriate contact information if the exigency involves meeting with a third-party. The Department has developed a new optional form (WH-384) for employees' use in obtaining certification that meets qualifying exigency leave certification requirements.

***Q. Are the certification procedures (timing, authentication, clarification, second and third opinions, recertification) the same for qualifying exigency leave and leave due to a serious health condition?***

A. The same timing requirements for certification apply to all requests for FMLA leave, including those for military family leave. Thus, an employee must provide the requested certification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

If the qualifying exigency involves a meeting with a third party, employers may verify the schedule and purpose of the meeting with the third party. Additionally, an employer may contact the appropriate unit of the Department of Defense to confirm that the covered military member is on active duty or call to active duty status.

Employers are not permitted to require second or third opinions on qualifying exigency certifications. Employers are also not permitted to require recertification for such leave.

***Q. How much FMLA leave may I take for qualifying exigencies?***

A. An employee may take up to 12 workweeks of FMLA leave for qualifying exigencies during the twelve-month period established by the employer for FMLA leave. Qualifying exigency leave may also be taken on an intermittent or reduced leave schedule basis.

***Q. Is the 12 weeks of qualifying exigency leave a one-time entitlement?***

A. No. If a covered military member's active duty or call to active duty status spans more than one FMLA leave year, an eligible employee would be eligible to take qualifying exigency leave in each FMLA leave year. Moreover, an eligible employee could take qualifying exigency leave in a subsequent FMLA leave year for a different covered military member. Finally, if the same covered military member returns from deployment and is subsequently redeployed, the eligible employee would again be entitled to qualifying exigency leave.

***Q. How much leave can I take if I need leave for both a serious health condition and a qualifying exigency?***

A. Qualifying exigency leave, like leave for a serious health condition, is a FMLA-qualifying reason for which an eligible employee may use his or her entitlement for up to 12 workweeks of FMLA leave each year. An eligible employee may take all 12 weeks of his or her FMLA leave entitlement as qualifying exigency leave or the employee may take a combination of 12 weeks of leave for both qualifying exigency leave and leave for a serious health condition.

***Q. Can I take qualifying exigency leave when my "covered military member" returns from deployment?***

A. Yes. An eligible employee is entitled to take qualifying exigency leave for certain qualifying post-deployment exigencies, including reintegration activities, for a period of 90 days following the termination of the covered military member's active duty status.

